

STATE OF CALIFORNIA

***GUIDE FOR
IMPLEMENTING
REASONABLE
ACCOMMODATION***



**EQUAL EMPLOYMENT OPPORTUNITY
FOR PERSONS WITH DISABILITIES**

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•Only included in hard copy version.

I. INTRODUCTION

PURPOSE

This *GUIDE FOR IMPLEMENTING REASONABLE ACCOMMODATION* is intended to give agencies the information and resources needed to make equitable, uniform and timely decisions that will insure reasonable accommodation is provided to applicants for State jobs and employees with disabilities.

OBJECTIVES

After reading this guide, the reader should understand:

1. The existing laws, regulations and policies governing reasonable accommodation;
2. The methods and procedures for implementing reasonable accommodation;
3. The appeal process established to review complaints based on the denial of reasonable accommodation; and
4. The location of information and resources available within California state service for dealing with reasonable accommodation issues.

ORGANIZATION

This guide is organized to provide information on the legal, procedural and appeals processes relating to reasonable accommodation. Its intent is to define reasonable accommodation, describe how it may be provided and examine the issue of undue hardship. Agencies will find suggestions for developing appropriate internal procedures to process requests for reasonable accommodations. Finally, the appeal process defines the method for reviewing denials of reasonable accommodation. The appendices at the back of the guide include reference materials and list resources for obtaining additional information. **PLEASE NOTE:** Appendices are available only in hard copy version.

SUMMARY OF BASIC RESPONSIBILITIES

1. State agencies are required by law to consider and provide reasonable accommodation to job applicants and employees who have disabilities, in all phases of the employment process.
2. State agencies are responsible for insuring that an internal procedure is established for processing reasonable accommodation requests on a timely basis and for informing their employees about the procedures.

3. Line management is responsible for assisting employees with disabilities with the development and implementation of reasonable accommodation requests. This can be the most critical phase of this process, since the line supervisors are generally the most knowledgeable about the essential functions of the job.
4. The State Personnel Board (SPB) is responsible for providing technical assistance to State agencies regarding reasonable accommodation and evaluating complaints based on the denial of reasonable accommodation. The Statewide Reasonable Accommodation Coordinator, at the SPB, is available to respond to questions about reasonable accommodation or this guide.

II. LEGAL AUTHORITY FOR REASONABLE ACCOMMODATION

FEDERAL LAW

The *Rehabilitation Act of 1973* implemented a national policy against discrimination on the basis of disability and was intended to promote the rehabilitation and employment of individuals with disabilities. The Act provided much of the initial impetus for our State's program efforts and has several very important sections relating to employment of persons with disabilities.

Section 504 is of particular importance. It provides that qualified individuals with disabilities shall not be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This section also requires employers to make reasonable accommodations to applicants and employees with disabilities.

On January 26, 1992 the *Americans with Disabilities Act of 1990 (ADA)* went into effect for State and local government agencies. Most of the equal employment opportunity and anti-discrimination provisions of the Act are identical to those of the *Rehabilitation Act of 1973*. Unlike the Rehabilitation Act, however, the ADA covers public and private employers, regardless of whether or not they receive Federal funding.

STATE LAW

In the State of California, job applicants and employees with disabilities are protected from employment discrimination with the Fair Employment and Housing Act (FEHA) commencing with Government Code Section 12925. The State statutes composing the Act generally provide greater protection than the Americans with Disabilities Act or the Rehabilitation Act.

In addition to Federal laws, rules and regulations concerning equal employment of persons with disabilities, the State of California adopted the following policy as stated in *Government Code Section 19230 (a), (b) and (c)*:

- (a) *It is the policy of this state to encourage and enable persons with disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.*
- (b) *It is the policy of this state that qualified persons with disabilities shall be employed in the state service, the service of the political subdivisions of the state, in public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the non disabled, unless it is shown that the particular disability is job related.*
- (c) *It is the policy of this state that a department, agency, or commission shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with a disability or employee, unless the hiring authority can demonstrate that the accommodation would impose an undue hardship on the operation of its program. A department shall not deny any employment opportunity to a qualified applicant with a disability or employee if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the applicant or employee.*

STATE RETURN-TO-WORK POLICY

Under Governor's Executive Order D-48-85, the State established the Injured State Worker Assistance Program and adopted a Return-to-Work Policy, which applies to all employees who become injured or ill on or off the job. Under the provisions of this policy, supervisors and managers are required to make every effort, including the provision of reasonable accommodation, to enable employees with disabilities to return to work. This effort may include, but is not limited to, job reinstatement, training and development assignment, transfer, or demotion to a position, which the employee can perform successfully.

Each agency has one or more Return-to Work Coordinators who are responsible for providing assistance to agency supervisors and managers by making them aware of all options available for retaining employees with disabilities in the California work force.

The Department of Personnel Administration coordinates the overall administration of the Injured State Worker Assistant Program. Questions concerning the program should be referred to the Worker's Compensation Unit at the Department of Personnel Administration.

SPB is responsible for coordinating equal employment opportunity efforts to employ and retain persons with disabilities in State service. As part of this responsibility, it coordinates the State's compliance with Federal and State laws regarding the provision of reasonable accommodation. Questions about reasonable accommodation may be referred to the SPB Reasonable Accommodation Coordinator in the Office of Civil Rights.

III. POLICY STATEMENT

The SPB, under *Government Code Section 19233*, requires each State agency to adopt a policy statement which specifies the agency's commitment to include persons with disabilities, in its affirmative action and equal employment opportunity plans.

The policy statement must contain the following elements:

1. A statement of nondiscrimination on the basis of disability against any qualified person with a disability;
2. A statement of intent to make all decisions regarding personnel policies and practices on the basis of the applicant's or employee's with disabilities capacity to perform a particular job; and
3. A stipulation that all applicants and employees with disabilities will be given consideration for any reasonable accommodation request.

IV. REASONABLE ACCOMMODATION PROCEDURES

In addition to a written policy statement, agencies are required to develop and issue to all their employees written procedures for obtaining reasonable accommodation.

These procedures must include the following:

1. Instructions on how to make a request for reasonable accommodation;
2. A description of the process that will be followed to review and make a decision on a request; (Note: The process must be an interactive process between the employee and the department. See page 10)
3. A description of the responsibilities of supervisors, managers and the agency reasonable accommodation coordinator for implementing reasonable accommodation requests;
4. Information on where employees may obtain more information or assistance regarding reasonable accommodation; and
5. Information on how to appeal inaction or a denial of a reasonable accommodation request, internally within the agency, to the SPB and to the Department of Fair Employment and Housing.

V. REASONABLE ACCOMMODATION - WHAT IS IT?

Reasonable Accommodation has been commonly defined as a logical adjustment made to a job and/or the work environment which enables a qualified person with a disability to perform the essential duties of his/her position. While this is certainly true, the application of reasonable accommodation extends beyond this. It applies to any adjustments made which allow a person with a disability to take part in any and all aspects of the employment process.

TYPES OF ACCOMMODATION REQUESTS

Five basic types of accommodation requests to which an agency must respond are as follows:

1. Requests for accommodation in the civil service examination process in order to allow a candidate with a disability to compete with non-disabled candidates as equally as possible;
2. Requests for accommodation to allow a person with a disability to perform the essential duties of the job to which he/she was newly hired;
3. Requests for accommodation to allow an employee with a disability to continue to perform the essential duties of his/her position, or to be reassigned to another vacant position;
4. Requests for accommodation to allow an employee with a disability to participate in training activities available to non-disabled employees for job improvement and self development; and
5. Requests for accommodation to allow an employee to have equal access to services and privileges afforded to non-disabled employees.

WHO QUALIFIES FOR REASONABLE ACCOMMODATION?

Any person with a disability, who possesses the requisite job requirements, is eligible to be considered for reasonable accommodation.

PERSON WITH A DISABILITY

Under the *Fair Employment and Housing Act*, a **person with a disability** is anyone who:

- a. Has a physical or mental impairment or medical condition which **limits** one or more of that person's major life activities. (Note: The impairment does not have to "substantially limit" as is required by the ADA.)

- (1) Physical or mental impairment or medical condition encompasses but is not limited to:
Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness or specific learning disabilities.
 - (2) **Major life activities** shall be broadly construed and shall include physical, mental, and social activities and working.
- b. Has a record or history of such an impairment or condition:

Has a record or history of such an impairment or condition means a history of a mental or physical impairment or medical condition that limits one or more major life activities. [Note: Under this definition, a person has no current impairment that needs accommodation.]
- c. Is regarded as having such an impairment or condition:

Is regarded as having such an impairment or condition means (1) having a physical or mental impairment or condition that does not limit a major life activity but is treated by an employer as a limitation; (2) having a physical or mental impairment or condition that limits major life activities only as a result of the attitudes of others toward such impairments or condition; or (3) not having an impairment or condition but is being treated by an employer as having an impairment or condition. [Note: Under this definition, a person has no impairment or condition that needs accommodation.]
The determination of whether an individual has a disability under the above definition must be made without regard to any mitigating factors, such as eye glasses, prosthesis or medication. This is a major difference with the Americans with Disabilities Act, where mitigating factors must be considered in determining whether an individual is covered by the Act.

QUALIFIED PERSON WITH A DISABILITY

A **qualified person with a disability** is anyone with a disability who possesses the requisite skill, experience, education and other job-related requirements of the employment position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the position.

DIRECT THREAT

In addition, to be considered a qualified person with a disability, a person must not pose a **direct threat** to the health or safety of himself or herself or others when performing the essential functions of the job. Direct threat means a significant risk of substantial and imminent harm, which cannot be eliminated or reduced to an acceptable level by reasonable accommodation. A threat that is remote or theoretical is not sufficient to conclude that a person is not a qualified person with a disability. The assessment of whether or not a person poses a direct threat must be made on a case-by-case basis considering the following factors:

1. The duration of the risk;
2. The nature and severity of the potential harm;
3. The likelihood that the potential harm will occur; and
4. The imminence of the potential harm.

IN SUMMARY

To qualify for reasonable accommodation, an individual must be a qualified person with a disability with an impairment or condition that hinders his/her ability to satisfactorily perform the essential functions of the position desired or held. There must also be an appropriate accommodation that will mitigate the impairment or condition and allow the person to satisfactorily perform the essential functions safely.

VII. WHAT ARE THE ESSENTIAL FUNCTIONS OF A JOB?

The essential functions are the fundamental duties of the employment position a person holds or desires. They do not include marginal functions of the position. A job function may be considered essential for any of the following reasons:

1. The position exists to perform the function;
2. There is a limited number of employees available among whom the performance of the function can be distributed; and
3. The function is highly specialized and the incumbent in the position was hired for his/her expertise or ability to perform the function.

VIII. PROCESSING REQUESTS

Each agency is responsible for establishing procedures for processing requests for reasonable accommodations and for ensuring that applicants and employees are informed about them (*see Reasonable Accommodation Procedures, p. 4*).

REASONABLE ACCOMMODATIONS IN STATE EXAMINATIONS

Applicants may initiate requests for reasonable accommodations in State examinations by checking Item 2 on the State application form (Form 100-678) and submitting the application to the agency responsible for administering the examination. The examination bulletin will identify the responsible State agency. The application must be submitted by the final filing date indicated on the bulletin or notice of testing.

State agencies are required to respond to the request within **10 working days** after the application has been approved for admittance to the examination. If information concerning the applicant's accommodation needs are not on file with the testing agency, the agency must obtain specific information on the type of accommodation needed. This may be done by sending the applicant the *Special Testing Arrangement Questionnaire For Applicants with Disabilities*, (Form SPB-351).

If the request is denied by the agency or ten working days after notice of application acceptance have elapsed without approval, the applicant with a disability may appeal directly to the SPB's Appeals Division. Such appeals must be filed within 30 days following the 10 working days response period. The Appeals Division will immediately notify the agency and request a written statement of the reasons for the denial. Within ten working days, the SPB's Executive Officer may order a remedy and/or submit the appeal for hearing at the next scheduled meeting of the five-Member State Personnel Board.

Guidelines for providing reasonable accommodation in State examinations may be found in *the Reasonable Accommodation Section of the Selection Manual*. Agencies are also encouraged to contact the Statewide Reasonable Accommodation Coordinator at the SPB for assistance, when needed, in responding to requests and **must contact the Coordinator prior to the denial of any request.**

REASONABLE ACCOMMODATION ON THE JOB

EMPLOYEE REQUESTS

State employees with disabilities, whether newly hired or persons with years of State service, may seek reasonable accommodation. Under the law, an employee's request for reasonable accommodation does not have to be in writing. Once an employee makes known his/her need for accommodation by talking with a supervisor or a reasonable accommodation coordinator, the agency cannot ignore the request. Once the need for accommodation is known, however, the agency can require the employee to cooperate by completing a written form, outlining the specific request and the facts supporting the request. The request should clearly indicate the following:

- This is a request for reasonable accommodation;
- The specific functional limitation which requires the accommodation;

- The type of accommodation needed, including specific suggestions for work site modification, specific duties which can be restructured to facilitate employment, or assistive devices, etc.; and
- An explanation of how the accommodation will allow the requester to perform the essential functions of the position.

SUBJECT TO PROPER PLACEMENT

A State agency may become aware of the need to provide reasonable accommodation when an individual is initially designated *Subject to Proper Placement* (STPP) by the State or agency Medical Officer, following a review of the employee's Health Questionnaire. An STPP letter represents a written notice to an agency that a job accommodation may be necessary. When an agency receives the STPP letter regarding a person to whom it has offered a job, such as an appointee from a list, the agency is required to discuss with the individual his/her job accommodation needs. Job accommodation also must be considered in the same way for current State employees with existing STPP designations when they are moving to a new position. For more information about the STPP process, see Personnel Management Policy and Procedures Manual, Section 375.

The agency is required to respond to a request for reasonable accommodation for the job within **20 working days**. The response need not be a final decision. It can be a status report, indicating that additional time is required to gather the facts needed to make accommodation. If the agency denies the accommodation or does not respond to the request within twenty days, the employee has 30 days in which to appeal directly to the Appeals Division at the SPB.

REASONABLE ACCOMMODATION FOR EMPLOYEE TRAINING

Employees with disabilities have the right to equal access of employer sponsored training that is available for job improvement and self development and upward mobility purposes. In providing or sponsoring training, State agencies must do the following:

1. Inform employees on all notices of training that reasonable accommodation will be provided at the training session to employees, where appropriate, upon reasonable advance notification of need;
2. Include TTY number (telecommunications device for a person with hearing impairment), phone numbers and/or the phone number of the California Relay Service on training notices so that deaf and hearing impaired employees can access more information;
3. Insure that facilities used for training are accessible to persons with disabilities; and

4. Arrange for sign language interpreters, captioned film or videos, large print or Braille written materials and other such accommodations as appropriate.

REASONABLE ACCOMMODATION FOR OTHER EMPLOYMENT SERVICES AND PRIVILEGES

The obligation to accommodate applies to all services and privileges an employer provides for its employees. This would include insuring that employee lounges and cafeterias are accessible; there is equal access to telephones and office equipment; and equal access to employer sponsored social events, such as retirement luncheons and holiday parties.

IX. DETERMINING THE NEED FOR ACCOMMODATION

The need for reasonable accommodation can only be determined on a case-by-case basis. Each individual is unique. Generalizations about a person's disability and his/her accommodation needs should not be made. Agencies must gather the facts that are specific for the individual requesting the accommodation. A decision to grant or deny an accommodation should only be made after obtaining all necessary information. In all cases, the applicant or employee should be consulted before an accommodation is provided. What may have been successful for one individual, may not be appropriate for another. In some cases, a person may have made adjustments for his/her disability, so that an accommodation is not necessary or desired.

X. REASONABLE ACCOMMODATION AND THE INTERACTIVE PROCESS

The *Fair Employment and Housing Act* [Government Code Section 12926.1 ©] requires State agencies to engage in an **interactive process** with an employee who requests a reasonable accommodation. An interactive process is one that involves direct communication between the agency and the employee to explore his/her accommodation needs. This communication should take place in person, unless it is impractical to do so. If necessary, communication may be done by telephone. Written communication alone is not a satisfactory interactive process. The interactive discussion should include the following:

- The essential functions of the employee's position;
- The job-related limitations of the employee and how they effect performance of the essential job functions;
- The medical information needed to support the accommodation request, i.e., the functional limitations the employee has (not the specific diagnosis). [Note: Where medical information is needed from the employee's health care practitioner, the employee's consent must be obtained to acquire the information.];

- The reasonable accommodation options available to mitigate the employee's limitations and the employee's preferred accommodation; and
- The timetable for making a decision on the employee's accommodation request, and for implementing the accommodation.

The agency must interact with an employee, even if the employee's request for accommodation is not reasonable. The agency must also maintain communication with the employee to keep him/her apprised of the status of the accommodation request, i.e., when a decision will be made and when the accommodation will be implemented. It is always wise to confirm information and agreements from discussions in writing to avoid any misunderstandings. A paper trail is very helpful in the case of any subsequent appeal that may take place.

Important: Federal and State law requires that confidentiality of medical records be maintained. Medical records must be kept separate from personnel files.

XI. INFORMATION NEEDED TO MAKE A DECISION

1. The agency should determine the tasks necessary to participate in the examination or to perform the essential functions of the job. This should be done through a job analysis, which might include reviewing the examination plan or the class specification and the duty statement on the specific position.

NOTE: It is very important to maintain up-to-date examination bulletins, class specifications and position duty statements because they may be used as legal evidence of the essential functions of the job.

2. The agency should obtain information concerning the person's specific limitations and how they would prevent him/her from participating in the examination or performing the essential functions of the job.
3. The agency must consult with the applicant or employee as to what accommodation would best allow him/her to participate in the examination or performing the essential functions of the job. This interactive process is required by the Fair Employment and Housing Act [Government Code Section 12926.1 (e)].
4. The agency should ask the following questions to clarify the nature and value of a particular accommodation that is requested:
 - Is the accommodation necessary for participation in the examination or for satisfactory performance of the essential functions of the position?
 - What effect will the accommodation have on the agency's operations and the employee's performance?

- To what extent does the accommodation compensate for the limitations of the person?
- Will the accommodation give the person with a disability the opportunity to function or compete on a more equal basis with non-disabled persons?
- Are there other alternatives that would accommodate the person more efficiently or economically?

XI. TYPES OF ACCOMMODATION

The types of reasonable accommodation actions that can be taken are as varied as the needs of the individuals involved, the types of positions available and the ingenuity of the employing agency. Reasonable accommodations may include, but should not be limited to, the following:

MAKING TEST SITES ACCESSIBLE

Examinations must be administered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible rest rooms, etc.) steps should be taken to remove those barriers. If this is not feasible, arrangements for use of an alternate testing facility, which is accessible, should be made.

The SPB has developed a checklist for test site accessibility, which is available to all departments. Information on test site accessibility is contained in *the Reasonable Accommodation Section of the Selection Manual*. Agencies may contact the Statewide Reasonable Accommodation Coordinator at the SPB for assistance.

MAKING WRITTEN TEST ACCOMMODATIONS

Although many persons with disabilities can usually demonstrate their knowledge and ability through regular testing procedures, the modification of some examination instruments may be necessary to enable those with certain disabling conditions to achieve test results commensurate with their capabilities. The objective is to eliminate any artificial barriers which may prevent these competitors from demonstrating their capabilities in the examination process. An evaluation of examination procedures may include any or all of the following:

1. **Test Administration Methods** – In some instances, modification of the manner in which a test is administered may be necessary. The following types of accommodations are examples:
 - Scheduling persons with disabilities as individuals or in small groups.
 - Allowing competitors with disabilities additional time to complete the test.
 - Using proctors that are trained to administer tests to persons with disabilities.

- Providing readers or written tests in Braille or large print for the visually impaired.
 - Providing markers for persons with limited use of their arms.
 - Providing sign language interpreters for persons with hearing impairments.
2. **Test Content** - Agencies may not administer examinations that screen out or tend to screen out persons with disabilities, unless the examination methodology and content is shown to be job related.

If a test has a disproportionate impact on candidates with disabilities, then the agency must consider modification of the testing method or test content to eliminate any disproportionate effects that are not job related. In some cases, this may require a validation study to evaluate the job relatedness of an examination.

The SPB has had experience in the modification of certain examinations for hearing and visually impaired applicants and may be able to offer some advice about what types of modifications are appropriate. Any questions about the modification of examinations should be referred to the Statewide Reasonable Accommodation Coordinator at the SPB.

MODIFYING WORK SITES

Changes in the work environment may be needed to allow a person with a disability to perform his/her job duties. Modifications at the work site can be very simple, costing very little. Examples of such modification are as follows:

- Rearranging files or shelves for accessibility to wheelchair users.
- Placing Braille labels or tactile cues on shelves, so employees who are blind can identify contents.
- Widening access areas between fixtures to allow room for wheelchairs.
- Raising or lowering equipment to provide comfortable working heights.
- Moving equipment controls or adapting them for hand or foot operations.
- Installing special holding devices on desks, machines or benches.
- Providing a speaker telephone or an extension arm or gooseneck to hold a telephone receiver.
- Installing telecommunications devices (TTY) or telephone amplifiers for a persons with a hearing impairments.

Employees with disabilities requiring reasonable accommodation are usually the best resource available, when evaluating possible work site modifications. These employees may have firsthand knowledge of specialized equipment, adaptive devices, or adjustments to the work site, which may assist them in their job performance. In addition, the supervisor responsible for evaluating the accommodation request should consult with the agency's business services office before any decisions are made. For further assistance, agencies may contact the ABLE DATA Program at the Employment Development Department (See Appendix A). This program offers a computerized data bank, which lists a number of available devices and specialized equipment, which can be used to modify work sites.

ADJUSTING WORK SCHEDULES

Individuals with disabilities in our society possess great productive potential, which often goes unused because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of alternative work schedules, accommodations can be made for various disabilities.

Employees with mobility impairments who find it difficult to maneuver during peak periods on public transportation systems might start their working day a little earlier or later. Employees requiring medical treatment on a regular basis may need a flexible work schedule, one or two days a week. Persons who need rest periods could adjust their work schedules to make up the time at the beginning or end of the workday. Sometimes employees, because of particular disabilities, such as diabetes, should work a regular schedule, even though others holding comparable jobs are required to work differing shifts. This is particularly true if the disability is affected by a person's eating or sleeping schedule.

RESTRUCTURING JOBS

Job restructuring is one of the principal means by which qualified workers with disabilities can be accommodated. Whether it is called job modification, adaptation, redesign, restructuring, tailoring or engineering, the idea is to identify those functions that make a job incompatible with a worker's abilities and, if possible, to eliminate those functions, so that the capabilities of the person may be used to their fullest extent. Job restructuring does not eliminate the essential functions of the job. Rather, any changes made are those which enable the person to perform the essential functions. This sometimes means changing job content by isolating and eliminating marginal (nonessential) functions through reassignment. More often, however, job modification is a matter of altering the method of task accomplishment.

The supervisor should obtain information about the limitations of the employee and then initiate a careful job analysis to determine the exact demands of the position to determine how it might be restructured. The supervisor and persons who currently perform the job should be included in the analysis process to accurately identify the essential and marginal (nonessential) functions of the position.

Example: A clerical employee with a mobility impairment is assigned to a receptionist-typist position. A secondary function of the position is to duplicate office documents. The duplicating function was reassigned to another clerk in the unit because the employee with the disability had limited ability to lift books and heavy items. In exchange, the receptionist-typist was assigned additional typing.

Agencies may obtain consultation regarding job restructuring from The Disability Access Section, at the Department of Rehabilitation (see Appendix A).

PROVIDING ASSISTIVE DEVICES

Through advanced technology, numerous assistive devices are available to individuals with disabilities. While such devices alone cannot assure successful job performance, they often enable persons with disabilities to perform tasks they would not otherwise be able to do and may increase the independence, quantity, quality or efficiency of their work.

Before purchasing any special equipment, the employee with the disability should be consulted as to what is needed and/or desired. In many cases, the person will have adapted to his/her disability in such a manner that special equipment is not necessary.

As a general rule, agencies may justify the purchase of equipment, if it is determined that the use of the equipment is necessary in transacting the official business of the agency. This purchased equipment should be job related and not of a personal nature. An agency would generally not be required to purchase personal items, such as wheelchairs, eyeglasses, hearing aids or prosthetic limbs, which would be used both on and off the job. It should be noted, however, that the provision of such items may be required as a reasonable accommodation where such items are specifically designed or required to meet job-related, rather than personal needs. An example would be providing eyeglasses to an employee with a visual impairment, specifically designed to enable the employee to use office computer monitors, but are not otherwise needed by the employee off the job. In determining whether or not the purchase of a device should be authorized, consideration should be given to whether or not the equipment is necessary to allow the employee to perform the essential functions of the job, and whether or not the employee needs the device outside his/her employment environment.

Agencies may obtain information about assistive devices from the ABLE DATA Program, at the Employment Development Department (see Appendix A).

PROVIDING SUPPORT SERVICES ASSISTANTS

There are two job classifications that have been established expressly for the purpose of providing personal assistance on the job to employees with disabilities. The classes are Support Services Assistant (General) and Support Services Assistant (Interpreter). A copy of the class specifications are contained in Appendices C and D.

The key factor in determining the need for providing Support Services Assistants is whether the accommodation allows an otherwise qualified person with a disability to perform the essential functions of the job. It is unreasonable to consider an individual

with a disability qualified, if it is necessary for a second person to be hired to replace or otherwise perform the essential functions of the job in question.

Example: A person with total blindness is employed as a Staff Services Analyst. To perform the essential functions of this job, the employee requires a Support Services Assistant to read necessary information. The reader is the reasonable accommodation, which enables the employee to perform the essential functions of the job, i.e. analyze information and make appropriate recommendations. The Support Services Assistant is not hired to make any of the analytical decisions.

PERSONAL CARE – Not Required

Support Services Assistants are only required to assist employees with disabilities in their performance of job-related functions. They are **not** required to assist such employees with their personal care, such as with feeding, hygiene or assistance in the rest room. Employees, however, may volunteer to provide these services.

SECURING A SUPPORT SERVICES ASSISTANT

The process for securing a Support Services Assistant for qualified employees with disabilities is as follows:

- The employee with a disability requests the Support Services Assistant and provides appropriate justification to the supervisor.
- If the request is approved, the immediate supervisor contacts the agency's personnel office and requests a certification from the SPB for the specific class, i.e., Support Services Assistant (General) or Support Services Assistant (Interpreter). If there is no certification list, a temporary appointment (TAU) may be considered, if a qualified candidate is found.
- When the agency receives the certification list, the hiring authority schedules interviews. The employee requiring the accommodation should be a member of the interviewing panel. The final selection of a suitable Support Services Assistant should be based on the needs of the employee and his/her evaluation of the candidate who can best meet those needs.
- The appointment of a Support Services Assistant should be processed through the personnel office in the same manner as any other appointment.
- Following the appointment of a Support Services Assistant, the responsible supervisor should rely heavily on the employee's evaluation of the Support Services Assistant's performance when determining retention and merit salary adjustments.

- Support Services Assistants are usually assigned as permanent intermittent employees. If conditions warrant, however, assignments may be part-time or full-time. The Support Service Assistant's position would not be counted as a budgeted position. The assistant is there as a reasonable accommodation. Agencies should consider assigning Support Services Assistants to more than one qualified employee with a disability, if this is feasible. This practice may result in better utilization and retention of Support Services Assistants.

ADOPTING FLEXIBLE LEAVE POLICIES

Agencies have the authority to adopt flexible leave policies to accommodate employees with disabilities. The administration of these policies should be consistent with applicable rules or labor agreements. Flexibility should be addressed in the agency's policy on the use of administrative leave and time off. It is intended that such leaves are used to meet specific short term, nonrecurring needs. Long-term needs should be met through use of flexible work schedules or reduced work time.

Examples:

1. An agency recently hired an attorney who is totally blind as its legal counsel. The job requires the employee to provide legal advice to several branch offices. Since the attorney is from out of town and not familiar with the community, the agency has allowed her administrative leave to work with a mobility orientation instructor. The instructor will familiarize her with the work environment, as well as the travel routes to the branch office she will serve.
2. An employee experienced a stroke, which resulted in a significant speech impairment. Once the employee was medically released to return to work as a Staff Services Analyst, there was still a need for speech improvement, which was determined to be job related. The employee was granted administrative leave to attend a speech improvement class at the local community college, which was only offered during working hours.

SUPPORTED EMPLOYMENT-NOT A REASONABLE ACCOMMODATION

Under the *Fair Employment and Housing Act*, supported employment, where employees work in a sheltered environment with a job coach and/or where the essential functions of the job are modified to enable an individual with a disability to perform a job, is not considered a reasonable accommodation.

REASSIGNING AND/OR RETRAINING EMPLOYEES

Agencies must make every effort to ensure the continued productive employment of State employees who become temporarily or permanently disabled because of illness or injury. If the agency has fully explored reasonable accommodation options and concluded that there is no accommodation that will allow the employee to continue to perform the essential duties of his/her current position, the agency must next fully explore alternative

job placement options before considering medical termination. Alternative job placement is considered a reasonable accommodation under both the ADA and the FEHA. Alternative job placement is the final accommodation consideration, which protects an employee with a disability against losing his/her employment. It is also one of the key components of the Injured State Worker Assistance Program.

LEGAL AUTHORITY

Title I, Section 101(9)(B), of the Americans with Disabilities Act specifically indicates that "...reassignment to a vacant position..." is a reasonable accommodation.

The Fair Employment and Housing Act [Government Code Section 12926 (n) (2)] states that "reassignment to a vacant position" is a reasonable accommodation. In addition, Government Code Section 19253.5 (d), provides that an agency may medically terminate an employee with a disability only if it "... concludes that the employee is unable to perform the work of his or her current position or any other position in the agency ...".

XIII. ALTERNATIVE JOB PLACEMENT

TEMPORARY PLACEMENT

Government Code Section 19050.8 and California Code of Regulations Section 443 provide that a State agency may work an employee with a disability out-of-class for up to two years in order to facilitate his/her return to productive employment. Such assignments can be used while exploring permanent accommodation solutions or providing training and development assignments.

ALTERNATE PLACEMENT (RETRAINING AND/OR REASSIGNMENT):

The employee's work experience and education may indicate that he/she can perform satisfactorily in another position in the same or a different class or can be retrained for another job. Reassignment need not be limited to positions at the same salary level or in the same class series. All classifications to which the employee could transfer or demote should be explored. Although the law does not require employers to promote employees as a reasonable accommodation, agencies may consider promotion. If the employee is eligible and can qualify for higher level employment through a promotion or a training and development assignment. This would only be appropriate, however, if he/she can perform the essential functions of the higher level position with or without reasonable accommodation.

It is important that agencies deal with their employees with disabilities promptly, thoroughly and sensitively. The following principles apply where alternative placement is concerned:

- Alternative placement is only to vacant positions.

- There should be close coordination within an agency among those responsible for providing service to an employee with a disability. This means that decisions about the employee should be coordinated among the Reasonable Accommodation Coordinator, Return to Work Coordinator, Health and Safety Officer, Equal Employment Opportunity Officer, legal staff and personnel office staff.
- It is the responsibility of the Reasonable Accommodation or Return to Work Coordinator to identify knowledge, skills and abilities of the employee with a disability for assessing appropriate training and development assignments and/or alternative job placement options.
- It is also the responsibility of the Reasonable Accommodation or Return to Work Coordinator to identify placement options within the agency on a statewide basis, unless the employee specifically limits the geographic location in which he/she is willing to work.
- The agency must offer the employee with a disability available positions within transfer range of his/her current position, before offering positions which would be demotions.

XIV. ELIMINATING TRANSPORTATION BARRIERS

One of the most difficult problems individuals with disabilities experience is transportation to the work site. Until recently, little was done to eliminate or reduce transportation barriers. Although steps are being taken by local government to alleviate these problems, i.e., accessible buses and special parking privileges, more needs to be done.

State employees are responsible for their own transportation to and from work. If, however, a State agency provides any transportation services for its employees, such as shuttle services between its facilities, such services must be accessible to employees with disabilities. In addition, agencies can do a great deal to help individual employees with disabilities solve their transportation problems. For instance, in employee parking lots, agencies can assign spaces closest to the building entrance to employees with mobility impairments.

The Department of Motor Vehicles provides special license plates and/or placards to qualified individuals with disabilities. These plates and placards permit free and unlimited parking at parking meters and in other non-restricted zones. Contact your local office of the Department of Motor Vehicles.

XV. ACCESSIBILITY OF FACILITIES

Architectural and program accessibility are governed by statutes such as the *Architectural Barriers Act of 1968* as amended and by *Government Code Section 4450*. These requirements should not be confused with reasonable accommodation for purposes of employment. Facilities built prior to the enactment of Federal and State accessibility

laws should be surveyed and any modifications or changes in those facilities should be included in the program access plan developed by each agency. Information or questions about the program access plan should be directed to the Office of the State Architect. Physical and/or structural changes should be made in order to provide an accessible environment. Eliminating architectural barriers through such means as ramps, wider doorways, elevators and handrails often makes the work facility more usable by all employees, not just those with disabilities. Questions concerning facility access should be directed to the Access Assistance Unit in the Office of the State Architect or the Disability Access Section of the Department of Rehabilitation (*Appendix A*).

XVI. DENIAL OF REASONABLE ACCOMMODATION

State and Federal laws and regulations require agencies to make reasonable accommodation to the known physical and/or mental limitations of an otherwise qualified applicant or employee with a disability, unless the agency can clearly demonstrate that the accommodation would impose an undue hardship on the operation of its program. These determinations must be made on an individual case-by-case basis. **Undue hardship** and direct threat (see p.7) are the only legitimate reasons for denying a reasonable accommodation that would allow a qualified employee with a disability to overcome his/her limitations and to perform the essential functions of the job.

EVALUATING UNDUE HARDSHIP

Undue hardship means that significant difficulty or expense would be incurred in the provision of the accommodation. The factors that must be considered in determining undue hardship are as follows:

- 1. The overall size of the agency with respect to the number of employees, number and type of facilities, and size of budget.**

Generally, State agencies are of such size and diversity that they can accommodate any qualified employee with a disability. However, in some locations, some agencies may have limited staff and resources to carry out their functions. In these cases, it may be an undue hardship to accommodate some qualified individuals with disabilities. This will not remove the obligation, however, for these agencies to interview and select other qualified individuals with disabilities who can perform the essential functions of the available jobs. The number and type of facilities should have little effect on the employment of most persons with disabilities. Although older buildings which may not be accessible to persons with disabilities are still in use by some agencies, State and Federal law requires that these inaccessible facilities and programs be identified and made “accessible to and usable by” persons with disabilities. All agencies are required, as part of the compliance requirements of *Section 504 of the Rehabilitation Act*, to prepare and implement a plan which assures that facilities and programs will be accessible to persons with disabilities. Information and consultation on building access standards can be obtained from the Office of

Real Estate and Design Services in the Department of General Services, the Office of the State Architect, or the Disability Access Section, at the Department of Rehabilitation (see Appendix A).

2. The type of operation including the composition, structure and functions of the agency's work force.

Most, if not all operations of agencies within State government, require a diverse work force, composed of a wide range of job classifications. In addition, most operations are conducted in several different geographic locations. These factors permit most agencies sufficient flexibility to provide employment for qualified individuals with disabilities. If an agency claims undue hardship based on the composition, structure and functions of its work force, it must clearly document that all available alternatives have been explored to accommodate qualified applicants or employees with disabilities.

3. The nature and cost of the accommodation needed.

In every case of undue hardship, cost is the final factor to be considered. Prior to purchasing any equipment or adaptive device, all alternatives should be explored to determine if the reasonable accommodation proposed is the most efficient and cost effective for both the employee and the agency. A claim of undue hardship based on cost must clearly indicate the alternatives explored and how the cost will impact the operation of the agency.

Experience has shown that less than five percent of applicants and employees with disabilities require reasonable accommodation. When required, most accommodations can be provided at little or no expense to the agency.

No standard has been established which specifies a required budget allocation for reasonable accommodation. Currently, agencies fund reasonable accommodation in a variety of ways. Some agencies specifically budget for reasonable accommodation. Others fund accommodations out of general operating expenses.

To estimate the amount of funds needed for reasonable accommodation, agencies should evaluate the composition of their work force, the potential for new hires and the number of applications for disability leave and disability retirement.

In determining whether undue hardship exists, agencies should coordinate with all parties involved, i.e., Program Access Coordinators, the Equal Employment Opportunity Officer, the Personnel Officer and the Business Services Officer. If additional information is needed to make a decision, agencies may contact the Reasonable Accommodation Coordinator at the SPB.

Agencies should be aware that outside funding for accommodations may be available from the Department of Rehabilitation or other agencies assisting persons with disabilities. In addition, employees may be willing to pay a part of the cost of the accommodation, if their agency would be unable to provide it

otherwise. It is important to note, however, that outside funding may be requested only for that portion of the accommodation that represents an undue hardship for the employing agency. All of this must be explored by the agency before denying a request for accommodation based on undue hardship.

XVII. REASONABLE ACCOMMODATION APPEALS

ACCOMMODATIONS IN THE EXAMINATION PROCESS

It is State policy (*in the RA Section of the Selection Manual*) that agencies shall respond to a request for accommodation in a Civil Service examination within **10 working days**. If the request is denied, the agency must respond in writing, explaining the reasons for denial and advising the person of his/her right to appeal the decision to the SPB. Individuals must file their appeal within **30 days** of the denial of accommodation.

ACCOMMODATIONS ON THE JOB

In accordance with *California Code of Regulations Section 53.2*, agencies must respond to a request for reasonable accommodation within **20 working days** from the date of the request. When reasonable accommodation is denied, the agency must respond in writing and include a description of the individual's appeal rights. If reasonable accommodation is denied by the agency or 20 working days have elapsed without approval, the individual with a disability may appeal directly to the SPB's Appeals Division (see Appendix A). Such appeals must be made within **30 days** following exhaustion of the 20 days response period. The Appeals Division will immediately notify the department and request a written statement of the denial.

Appeals should specifically state what is being appealed, why he/she disagrees with the agency's denial of the reasonable accommodation request and what remedy is being sought. It should also include any other information in support of the request.

The foregoing procedures apply only to appeals from the denial of reasonable accommodation. Other types of discrimination complaints based on disability are subject to the same process and time frames as complaints based on sex or ethnicity. In addition, should an individual disagree with the medical basis upon which a Subject to Proper Placement designation was based, he/she may file a written appeal with the SPB Appeals Division, no later than **30 days** after receipt of the STPP notification letter.

Employees denied reasonable accommodation also have the concurrent right to appeal to the Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission. If provided with a right to sue letter by these agencies, employees can then file suit in State or Federal court for relief. Any questions regarding the reasonable accommodation appeals procedure should be directed to the Appeals Division at the SPB.

XVIII. CONCLUDING COMMENTS

We hope that this guide has provided useful information on the requirements and methods for providing reasonable accommodation. We encourage and solicit suggestions and comments which will improve the content and procedures included in this guide. Please direct your comments to the Statewide Reasonable Accommodation Coordinator at the SPB.